

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

733J0519

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **HB 1123** - 02/18/2004

Introduced by: Representatives Michels and Konold and Senators Knudson and Bogue

1 FOR AN ACT ENTITLED, An Act to authorize banks to be organized as limited liability  
2 companies.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That subdivision (1) of § 51A-1-2 be amended to read as follows:

5 (1) "Bank," any corporation or limited liability company, organized pursuant to chapter  
6 47-34A, authorized under this title to engage in the business of banking or in the  
7 combined business of a bank and trust company or in the combined business of a  
8 bank with trust powers;

9 Section 2. That chapter 51A-3 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 A bank may be organized as a limited liability company. The commission shall promulgate  
12 rules pursuant to chapter 1-26, consistent with Title 51A, for the organization, management,  
13 extension of its charter, and general administration of a bank that is organized as a limited  
14 liability company. The rules shall facilitate the organization and capital structure, the offering  
15 of trust business and the ability to develop branch bank and drive-in facilities, the offering of



1 remote service banking and bank services, the acceptance of deposits and the making of  
2 investments, the offering of safe deposit and safe keeping protocols, the making of loans, the  
3 reorganization of the limited liability company bank, and the operation of a bank organized as  
4 a limited liability company to operate on an equal and parity basis with a bank organized as a  
5 corporation.

6 Section 3. That § 10-43-10.1 be amended to read as follows:

7 10-43-10.1. Net income, in the case of a financial institution, is taxable income as defined  
8 in the Internal Revenue Code, as amended, and in effect on January 1, 2003, and reportable for  
9 federal income tax purposes for the taxable year, but subject to the adjustments as provided in  
10 §§ 10-43-10.2 and 10-43-10.3. If a financial institution has elected to file its federal tax return  
11 pursuant to 26 USC § 1362(a), as amended, and in effect on January 1, 1997, net income shall  
12 be computed in the same manner and in the same amount as if that institution had continued to  
13 file its federal tax return without making the election and the financial institution shall continue  
14 to be treated as a separate corporation for the purposes of this chapter. If a financial institution  
15 is organized as a limited liability company, the limited liability company shall be treated as a  
16 separate corporation for the purpose of this chapter.

17 Section 4. That § 10-43-10.3 be amended by adding thereto a NEW SUBDIVISION to read  
18 as follows:

19 For those financial institutions organized as limited liability companies, imputed federal  
20 income taxes in an amount equal to the taxes that would have been paid on net income as  
21 defined in § 10-43-10.1 had the financial institution elected to file as a subchapter C corporation  
22 under the Internal Revenue Code.

23 Section 5. That § 47-34A-211 be amended to read as follows:

24

1        47-34A-211. (a) A limited liability company, and a foreign limited liability company  
2        authorized to transact business in this state, except a bank organized pursuant to section 2 of this  
3        Act, shall deliver to the secretary of state for filing an annual report that sets forth:

- 4        (1)    The name of the company and the state or country under whose law it is organized;
- 5        (2)    The address of its registered office and the name and address of its registered agent  
6                for service of process in this state;
- 7        (3)    The address of its principal office;
- 8        (4)    The names and business addresses of any managers;
- 9        (5)    The dollar amount of the total agreed contributions to the limited liability company.

10        (b) Information in an annual report must be current as of the date the annual report is signed  
11        on behalf of the limited liability company.

12        (c) The first annual report must be delivered to the secretary of state concurrent with the  
13        filing of the articles of organization. Subsequent annual reports must be delivered to the  
14        secretary of state before the first day of the second month following the anniversary month of  
15        the filing date.

16        (d) If an annual report does not contain the information required in subsection (a) or the fees  
17        required by § 47-34A-212, the secretary of state shall promptly notify the reporting limited  
18        liability company or foreign limited liability company and return the report to it for correction.  
19        If the report is corrected to contain the information required in subsection (a) or the fees  
20        required by § 47-34A-212 and delivered to the secretary of state within thirty days after the  
21        effective date of the notice, it is timely filed.

22        Section 6. That § 51A-1-2 be amended by adding thereto NEW SUBDIVISIONS to read as  
23        follows:

24        "Articles of incorporation," articles of incorporation for a bank organized by incorporators

1 as a corporation pursuant to chapters 47-2 to 47-9, inclusive, and articles of organization for a  
2 bank organized by organizers or members as a limited liability company pursuant to chapter 47-  
3 34A;

4 "By-laws," by-laws for a bank organized by incorporators as a corporation pursuant to  
5 chapters 47-2 to 47-9, inclusive, and operating agreement for a bank organized by organizers  
6 or members as a limited liability company pursuant to chapter 47-34A;

7 "Stockholder," a shareholder of a bank organized by incorporators as a corporation pursuant  
8 to chapters 47-2 to 47-9, inclusive, and a member for a bank organized by organizers or  
9 members as a member as a limited liability company pursuant to chapter 47-34A;

10 "Board of directors," board of directors for a bank organized by incorporators as a  
11 corporation pursuant to chapters 47-2 to 47-9, inclusive, and a manager for a manager-managed  
12 bank or a member for a member-managed bank organized as a limited liability company  
13 pursuant to chapter 47-34A;

14 "Stock," shares for a bank organized by incorporators as a corporation pursuant to chapters  
15 47-2 to 47-9, inclusive, and member equity for a bank organized as a limited liability company  
16 pursuant to chapter 47-34A;

17 "Dividends," distributions for a corporation organized by incorporators as a corporation  
18 pursuant to chapters 47-2 to 47-9, inclusive, and distributions for a bank organized by organizers  
19 or members as a limited liability company pursuant to chapter 47-34A.

20 Section 7. That § 51A-3-2 be amended to read as follows:

21 51A-3-2. ~~The~~ For a bank organized as a corporation, the articles of incorporation of a bank  
22 ~~corporation~~ shall state, and for a bank organized as a limited liability company, the articles of  
23 organization of a bank shall state:

24 (1) That the corporation or limited liability company is formed for the purpose of

1           engaging in the business of banking, or as a bank and trust company, or as a bank and  
2           trust department;

3       (2)   The period for which such corporation or limited liability company is organized, not  
4           exceeding twenty years.

5       The name of such bank shall be different from the name of any other bank or trust company  
6   in the county of its place of business. ~~Its~~ The capital stock of a bank organized as a corporation  
7   shall be divided into shares of not less than ten nor more than one hundred dollars each. The  
8   members' equity of a bank organized as a limited liability company shall be divided into units  
9   of not less than ten nor more than one hundred dollars each.

10      Section 8. That § 51A-3-5 be amended to read as follows:

11      51A-3-5. ~~The~~ For a bank organized as a corporation, the original issue of bank stock, and  
12   for a bank organized as a limited liability company, the original issue of members' equity, shall  
13   be sold at a price of not less than twenty percent in excess of its par value and paid for in full  
14   in lawful money of the United States. The excess over the par value shall be credited on the  
15   books of the bank to the surplus.

16      Section 9. That § 51A-3-6 be amended to read as follows:

17      51A-3-6. One-tenth of the net profit for any dividend period shall be carried to the surplus  
18   fund until such fund shall amount to twenty percent of the capital stock or members' equity. Any  
19   losses sustained in excess of undivided profits may be charged to the surplus account, but no  
20   dividends shall thereafter be declared or paid until the surplus fund shall amount to twenty  
21   percent of the capital stock or members' equity.

22      Section 10. That § 51A-5-6 be amended to read as follows:

23      51A-5-6. It is lawful for any national bank to engage in trust business in this state to the  
24   extent authorized by the laws of the United States, without incorporating or organizing under

1 the laws of this state, but ~~they~~ a national bank shall otherwise comply with and be subject to all  
2 laws of this state which are applicable to state banks engaged in trust business including such  
3 examinations as may be deemed necessary, except that the authority of the commission and the  
4 director shall apply to their trust business only. The director may accept in lieu of an  
5 examination conducted under ~~his~~ the director's direction, any report of examination conducted  
6 by the appropriate federal regulatory agency.

7 Section 11. That § 51A-12-2 be amended to read as follows:

8 51A-12-2. Except as otherwise provided in this title, no bank organized as a corporation or  
9 limited liability company may loan, or otherwise extend credit, to any corporation, partnership,  
10 or individual, an amount greater than the sum of:

11 (1) Twenty percent of its capital stock or members' equity and surplus; and

12 (2) Ten percent of its undivided profit.

13 Such limit shall be determined for each calendar quarter on the basis of the bank's quarterly  
14 report of condition for the immediately previous calendar quarter.